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RECORDATION NO. 25135 FILED August 9, 2004

AUG 11 '04 12-27 PM

SURFACE TRANSPORTATION BOARD

The Honorable Vernon A. Williams

Secretary

Surface Transportation Board

1925 K Street, NW

Washington, DC 20423-0001



Re: Gulf & Ohio Railways Holding Company, Inc.

Dear Secretary Williams:

Enclosed are four (4) originals of the document described below to be recorded pursuant to Section 11301 of Title 49 of the United States Code.

This document is a Loan and Security Agreement creating a security interest in three (3) EMD, SW1500 Switching Locomotives, #2240, #2241 and #2242.

The names and addresses of the parties to the document are as follows:

Lender:

BankEast
607 Market Street
Knoxville, TN 37902

Borrower:

Gulf & Ohio Railways Holding Company, Inc.
401 Henley Street
Knoxville, TN 37902

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Honorable Vernon A. Williams

Re: Gulf & Ohio Railways Holding Company, Inc.

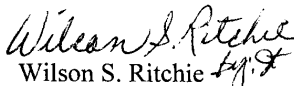
August 9, 2004

A fee of \$90.00 is enclosed. Please return any originals not needed by the Surface Transportation Board for recordation to:

The Ritchie Law Firm, P.C.
Post Office Box 987
Knoxville, TN 37901-0987

If you need additional documents or information, please let us know. Thank you for your assistance.

Sincerely yours,


Wilson S. Ritchie

WSR:jt

Enclosures

RECORDATION NO. 25135 FILED

AUG 11 '04 12:27 PM

LOAN AND SECURITY AGREEMENT

SURFACE TRANSPORTATION BOARD

THIS LOAN AND SECURITY AGREEMENT ("Agreement") is made this 23rd day of July, 2004, by and between **GULF & OHIO RAILWAYS HOLDING COMPANY, INC.**, a Tennessee corporation, 401 Henley Street, Knoxville, Tennessee 37902 ("Debtor") and **BANKEAST**, a Tennessee banking corporation, with principal offices at 607 Market Street, Knoxville, Tennessee 37902 ("Bank").

WITNESSETH:

WHEREAS, Debtor has requested Bank to extend to Debtor a loan in the principal amount of THREE HUNDRED THOUSAND Dollars (\$300,000.00); and

WHEREAS, Bank is willing to make such loan to Debtor upon the terms and conditions set forth in this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants contained herein, Debtor and Bank do hereby agree as follows:

1. CONSTRUCTION AND DEFINITION OF TERMS.

All terms used herein without definition which are defined by the Tennessee Uniform Commercial Code shall have the meanings assigned to them by the Tennessee Uniform Commercial Code, as in effect on the date hereof, unless and to the extent varied by this Agreement. All accounting terms used herein without definition shall have the meanings assigned to them as determined by generally accepted accounting principles. Whenever the phrase "satisfactory to Bank" is used in this Agreement, such phrase shall mean "satisfactory to Bank in its sole discretion." The use of any gender or the neuter herein shall also refer to the other gender or the neuter and the use of the plural shall also refer to the singular, and vice versa. In addition to the terms defined elsewhere in this Agreement, unless the context otherwise requires, when used herein, the following terms shall have the following meanings:

1.1 "Agreement" means this Loan and Security Agreement and all amendments, modifications and supplements hereto.

1.2 "Banking Day" shall mean Monday through Friday, excluding any federal or state holiday or other day that banks in the state of Tennessee are closed.

1.3 "Bankruptcy Code" means the United States Bankruptcy Code, as amended from time to time.

1.4 "Business Premises" shall mean Debtor's chief executive office located at 401 Henley Street, Knoxville, Tennessee 37902.

1.5 "Certified" shall mean that the information, statement, schedule, report or other document required to be "Certified" shall contain a representation of a duly authorized officer of Debtor that such information, statement, schedule, report or other document is true and complete.

1.6 "Closing" shall mean the date on which this Agreement is executed.

1.7 "Collateral" shall mean all of the following property of Debtor, both now owned and hereafter acquired:

(a) An EMD, SW1500 Switching Locomotive, #2240; and

(b) An EMD, SW1500 Switching Locomotive, #2241; and

(c) An EMD, SW1500 Switching Locomotive, #2242; and

(d) All proceeds, products, replacements, additions to, substitutions for, accessions of, and property necessary for the operation of any of the foregoing, including, without limitation, insurance payable as a result of loss or damage to any of the foregoing.

1.8 "Event of Default" shall mean any of the events described in Section 8 hereof.

1.9 "GAAP" shall mean generally accepted accounting principles in the United States of America in effect from time to time.

1.10 "Governmental Authority" means any nation or government, any state or other political subdivision thereof and any entity exercising executive, legislative, judicial, regulatory or administrative functions of or pertaining to government.

1.11 "Guarantor" shall individually and collectively mean H. Peter Claussen and Linda Claussen.

1.12 "Indebtedness" shall include all items which would properly be included in the liability section of a balance sheet or in a footnote to a financial statement in accordance with generally accepted accounting principles, and shall also include all contingent liabilities.

1.13 "Laws" shall mean all ordinances, statutes, rules, regulations, orders, injunctions, writs or decrees of any Governmental Authority or political subdivision or agency thereof, or any court or similar entity established by any thereof.

1.14 "Lien" shall mean any statutory or common law consensual or non-consensual mortgage, pledge, security interest, encumbrance, lien, right of setoff, claim or charge of any kind, including, without limitation, any conditional sale or other title retention transaction, any lease transaction in the nature thereof and any secured transaction under the Uniform Commercial Code of any jurisdiction.

1.15 "Loan Documents" shall mean any and all agreements, contracts, promissory notes, security agreements, assignments, subordination agreements, pledge or hypothecation agreements, mortgages, deeds of trust, leases, guaranties, instruments, letters of credit, letter of credit agreements and documents now and hereafter existing between Bank and Debtor, executed and/or delivered pursuant to this Agreement or otherwise or guaranteeing, securing or in any other manner relating to any of the Obligations, including, without limitation, the instruments and documents referred to in Subsection 5.1 hereof together with any other instrument or document executed by Debtor, Bank or any other person in connection with the Loans.

1.16 "Note" shall mean the Promissory Note of Debtor evidencing the Loan and all renewals, replacements and extensions thereof.

1.17 "Obligations" shall include the full and punctual observance and performance of all present and future duties, covenants and responsibilities due to Bank by Debtor under this Agreement, the Note, the Loan Documents and otherwise, all present and future obligations and liabilities of Debtor to Bank for the payment of money under this Agreement, the Note, the Loan Documents and otherwise (extending to all principal amounts, interest, late charges, fees and all other charges and sums, as well as all costs and expenses payable by Debtor under this Agreement, the Note, the Loan Documents and otherwise), whether direct or indirect, contingent or noncontingent, matured or unmatured, accrued or not accrued, related or unrelated to this Agreement, whether or not now contemplated, whether or not any instrument or agreement relating thereto specifically refers to this Agreement and whether or not of the same character or class as Debtor's obligations under this Agreement or the Note, including, without limitation, overdrafts in any checking or other account of Debtor at Bank and claims against Debtor acquired by assignment to Bank, whether or not secured under any other document, or agreement or statutory or common law provision, as well as all renewals, refinancings, consolidations, re-castings and extensions of any of the foregoing, the parties acknowledging that the nature of the relationship created hereby contemplates the making of future advances by Bank to Debtor.

1.18 "Obligor" shall mean individually and collectively, Debtor, the Guarantor and each endorser and surety of the Obligations; any person who is primarily or secondarily liable for the repayment of the Obligations, or any portion thereof; and any person who has granted security for the repayment of any of the Obligations.

1.19 "Person" shall include natural persons, corporations, associations, limited liability companies, partnerships, joint ventures, trusts, governments and agencies and departments thereof and every other entity of every kind.

1.20 "Prime Rate" shall mean the *Wall Street Journal* Prime Rate. "*Wall Street Journal* Prime Rate" shall mean a fluctuating rate of interest as in effect from time to time, which interest rate shall at all times be equal to the rate of interest declared in the *Wall Street Journal* as the "prime rate." Each change in the *Wall Street Journal* Prime Rate shall become effective, without notice to the undersigned (which notice is hereby expressly waived), on the effective

date of each such change. The interest charged shall be calculated based upon (a) three hundred sixty (360) day year daily interest, times (b) the actual number of calendar days elapsed. floating and fluctuating rate of interest which Bank from time to time announces as and declares to be its prime rate of interest. The Prime Rate may not be the lowest rate of interest charged by Bank for commercial or other types of loans.

1.21 "Voting Stock" shall mean the shares of any class of capital stock of a corporation having ordinary voting power to elect the directors, officers or trustees thereof, including such shares that shall or might have voting power by reason of the occurrence of one or more conditions or contingencies.

2. THE LOAN.

2.1 **Loan Advances.** Subject to the terms and conditions hereinafter set forth, Bank agrees to lend to Debtor and Debtor agrees to borrow from Bank the principal sum of Three Hundred Thousand Dollars (\$300,000.00) (the "Loan"). The proceeds of the Loan shall be used to refinance certain debt on locomotives.

2.2 **Note.** Debtor's obligation to repay the Loan with interest shall be evidenced by, and the Loan shall be repaid with interest in accordance with, the Note.

2.3 **Interest.** Until maturity (whether by demand, stated maturity, acceleration or otherwise), all principal sums outstanding under the Note shall bear interest at the *Wall Street Journal* Prime Rate as adjusted daily. "*Wall Street Journal* Prime Rate" shall mean a fluctuating rate of interest as in effect from time to time, which interest rate shall at all times be equal to the rate of interest declared in the *Wall Street Journal* as the "prime rate." Each change in the *Wall Street Journal* Prime Rate shall become effective, without notice to the undersigned (which notice is hereby expressly waived), on the effective date of each such change. The interest charged shall be calculated based upon (a) three hundred sixty (360) day year daily interest, times (b) the actual number of calendar days elapsed.

2.4 **Repayment.** The Loan shall be repaid by Debtor as follows:

(a) **Principal.** A constant payment of Five Thousand Dollars (\$5,000.00) commencing on the twenty-third (23rd) day of August, 2004, and on the twenty-third (23rd) day of each calendar month thereafter up to and including the twenty-third (23rd) day of July, 2009, which shall be applied to the principal payment.

(b) **Interest.** In addition to the principal payment set forth above, an interest payment based upon the *Wall Street Journal* Prime Rate as adjusted daily shall be paid to the Bank commencing on the twenty-third (23rd) day of August, 2004, and on the twenty-third (23rd) day of each calendar month thereafter up to and including the twenty-third (23rd) day of July, 2009.

(c) The balance of the Principal Amount and all interest thereon shall be due and payable on the twenty-third (23rd) day of July, 2009.

2.5 **Prepayment.** Debtor may at its option prepay the Note in whole at any time or in part from time to time, subject to the prepayment fees (if any) provided in the Note. Unless otherwise agreed by Bank, all prepayments of principal shall be accompanied by payment of accrued and unpaid interest on the Loan to the date of the prepayment. All prepayments may, in Bank's discretion, be applied first to the payment of accrued and unpaid interest and then to the payment of the unpaid principal balance. All prepayments of principal may, in Bank's discretion, be applied to the principal installment payments under the Note (which shall include any balloon payment) in the inverse order of their maturity.

2.6 **Late Charge; Default Rate.** If any payment required to be made by Debtor hereunder is not paid within ten (10) days after the date on which such payment is due, Debtor shall pay to Bank on demand a late charge equal to five percent (5%) of the amount of such payment. The late payment charge shall be payable to Bank on demand. Upon the occurrence of an Event of Default hereunder, sums outstanding under the Loan shall bear interest at the default rate of interest as set forth in the Note (the "Default Rate") until the default is cured. The default shall be cured on the demand by Bank.

3. **SECURITY.**

3.1 **Security Interest.** As security for the payment and performance of all of the Obligations, whether or not any instrument or agreement relating to any Obligation specifically refers to this Agreement or the security interest created hereunder, Debtor hereby assigns, pledges and grants to Bank a continuing security interest in the Collateral. Bank's security interest shall continually exist until (a) all Obligations have been paid in full and (b) there exists no commitment by Bank which could give rise to any of the Obligations.

3.2 **Covenants and Representations Concerning Collateral.** With respect to all of the Collateral, Debtor covenants, warrants and represents that:

(a) No financing statement covering any of the Collateral is on file in any public office or land or financing records except for financing statements in favor of Bank, and Debtor is the legal and beneficial owner of all of the Collateral, free and clear of all Liens.

(b) The security interest granted Bank hereunder shall constitute a first priority Lien upon the Collateral. Debtor will not, and Bank does not authorize Debtor to, transfer, discount, sell, grant or assign any interest in the Collateral nor, without Bank's prior written consent, permit any other Lien to be created or remain thereon.

(c) Debtor will maintain the Collateral in good order and condition, ordinary wear and tear excepted, and will use, operate and maintain the Collateral in compliance with all laws, regulations and ordinances and in compliance with all applicable insurance requirements and regulations. Debtor will promptly notify Bank in writing of any litigation involving or affecting the Collateral which Debtor knows or has reason to believe is pending or threatened. Debtor will promptly pay when due all taxes and all transportation, storage, warehousing and other such charges and fees affecting or arising out of or relating to the Collateral and shall

defend the Collateral, at Debtor's expense, against all claims and demands of any persons claiming any interest in the Collateral adverse to Debtor or Bank.

(d) At all reasonable times Bank and its agents and designees may enter the Business Premises and any other premises of Debtor and inspect the Collateral and all books and records of Debtor (in whatever form), and Debtor shall pay the costs of such inspections.

(e) Debtor will maintain comprehensive casualty insurance on the Collateral against such risks, in such amounts, with such loss deductible amounts and with such companies as may be satisfactory to Bank, and each such policy shall contain a clause or endorsement satisfactory to Bank naming Bank as loss payee and a clause or endorsement satisfactory to Bank that such policy may not be cancelled or altered and Bank may not be removed as loss payee without at least thirty (30) days prior written notice to Bank. Debtor hereby assigns to Bank and grants to Bank a security interest in any and all proceeds of such policies and authorizes and empowers Bank to adjust or compromise any loss under such policies and to collect and receive all such proceeds. Debtor hereby authorizes and directs each insurance company to pay all such proceeds directly and solely to Bank and not to Debtor and Bank jointly. Debtor authorizes and empowers Bank to execute and endorse in Debtor's name all proofs of loss, drafts, checks and any other documents or instruments necessary to accomplish such collection, and any persons making payments to Bank under the terms of this paragraph are hereby relieved absolutely from any obligation or responsibility to see to the application of any sums so paid. After deduction from any such proceeds of all costs and expenses (including reasonable attorney's fees) incurred by Bank in the collection and handling of such proceeds, the net proceeds shall be applied as follows. If no Event of Default shall have occurred and be continuing, such net proceeds may be applied, at Debtor's option, either toward replacing or restoring the Collateral, in a manner and on terms satisfactory to Bank, or as a credit against such of the Obligations, whether matured or unmatured, as Bank shall determine in Bank's sole discretion. In the event that Debtor may and does elect to replace or restore as aforesaid, then such net proceeds shall be deposited in a segregated account of Debtor at Bank and subject to the sole order of Bank and shall be disbursed therefrom by Bank in such manner and at such times as Bank deems appropriate to complete such replacement or restoration; provided, however, that if an Event of Default shall occur at any time before or after replacement or restoration has commenced, then thereupon Bank shall have the option to apply all remaining net proceeds either toward replacing or restoring the Collateral, in a manner and on terms satisfactory to Bank, or as a credit against such of the Obligations, whether matured or unmatured, as Bank shall determine in Bank's sole discretion. If an Event of Default shall occur prior to such deposit of the net proceeds, then Bank may, in its sole discretion, apply such net proceeds either toward replacing or restoring the Collateral, in a manner and on terms satisfactory to Bank, or as a credit against such of the Obligations, whether matured or unmatured, as Bank shall determine in Bank's sole discretion.

(f) All books and records pertaining to the Collateral are located at the Business Premises and Debtor will not change the location of such books and records without the prior written consent of Bank, which consent shall not be unreasonably withheld. Debtor shall make notations, satisfactory to Bank, on its books and records disclosing the existence of Bank's security interest in the Collateral.

(g) Debtor shall do, make, execute and deliver all such additional and further acts, things, deeds, assurances, instruments and documents as Bank may request to vest in and assure to Bank its rights hereunder or in any of the Collateral, including, without limitation, placing legends on Collateral stating that Bank has a security interest therein.

(h) Debtor shall cooperate with Bank to obtain and keep in effect one or more control agreements in deposit account, electronic chattel paper, investment property and letter-of-credit rights Collateral.

(i) Debtor authorizes Bank to file financing statements covering the Collateral and all personal property of Debtor and containing such legends as Bank shall deem necessary or desirable to protect Bank's interest in the Collateral. Debtor agrees to pay all taxes, fees and costs (including attorneys' fees) paid or incurred by Bank in connection with the preparation, filing or recordation thereof. Debtor ratifies its prior authorization for Bank to file such financing statements.

(j) Whenever required by Bank, Debtor shall promptly deliver to Bank, with all endorsements and/or assignments required by Bank, all instruments, chattel paper, guaranties and the like received by Debtor constituting, evidencing or relating to any of the Collateral or proceeds of any of the Collateral.

(k) Debtor shall not file any amendments, correction statements or termination statements concerning the Collateral without the prior written consent of Bank.

(l) If any Collateral arises out of a contract with the United States Government or any department, agency or instrumentality thereof, Debtor shall immediately notify Bank thereof and shall execute and deliver to Bank specific assignments, of those contracts and the related United States Government accounts of Debtor and shall do such other things as may be satisfactory to Bank in order that all sums due and to become due to Debtor under such contract shall be duly assigned to Bank in accordance with the Federal Assignment of Claims Act (31 United States Code § 3727; 41 United States Code § 15) as in effect on the date hereof and as hereafter amended and/or any other applicable laws and regulations relating to the assignment of governmental obligations. Payments on United States Government contracts or United States Government accounts which have been specifically assigned to Bank by means of a direct assignment, as provided herein, shall be made directly to Bank, for payment to the Loan. The separate assignment of specific United States Government contracts to Bank, as contemplated herein, shall not be deemed to limit Bank's security interest to the payments under those particular United States Government contracts and the related United States Government accounts, but rather Bank's security interest shall extend to any and all United States Government contracts and the related United States Government accounts and proceeds thereof, now or hereafter owned or acquired by Debtor. During the term of this Agreement, Debtor agrees and covenants not to make any assignment of any of the United States Government contracts to any party other than Bank without Bank's prior written consent.

3.3 **Collateral Collections.** After an Event of Default shall have occurred, Bank shall have the right at any and all times to enforce Debtor's rights against account debtors

and other parties obligated on Collateral, including, but not limited to, the right to: (a) notify and/or require Debtor to notify any or all account debtors and other parties obligated on Collateral to make payments directly to Bank or in care of a post office lock box under the sole control of Bank established at Debtor's expense subject to Bank's customary arrangements and charges therefor, and to take any or all action with respect to Collateral as Bank shall determine in its sole discretion, including, without limitation, the right to demand, collect, sue for and receive any money or property at any time due, payable or receivable on account thereof, compromise and settle with any person liable thereon, and extend the time of payment or otherwise change the terms thereof, without incurring liability or responsibility to Debtor; (b) require Debtor to segregate and hold in trust for Bank and, on the day of Debtor's receipt thereof, transmit to Bank in the exact form received by Debtor (except for such assignments and endorsements as may be required by Bank), all cash, checks, drafts, money orders and other items of payment constituting Collateral or proceeds of Collateral; and/or (c) establish and maintain at Bank a "Repayment Account," which shall be under the exclusive control of and subject to the sole order of Bank and which shall be subject to the imposition of such customary charges as are imposed by Bank from time to time upon such accounts, for the deposit of cash, checks, drafts, money orders and other items of payments constituting Collateral or proceeds of Collateral from which Bank may, in its sole discretion, at any time and from time to time, withdraw all or any part. Bank's collection and enforcement of Collateral against account debtors and other persons obligated thereon shall be deemed to be commercially reasonable if Bank exercises the care and follows the procedures that Bank generally applies to the collection of obligations owed to Bank. All cash and non-cash proceeds of the Collateral may be applied by Bank upon Bank's actual receipt of cash proceeds against such of the Obligations, matured or unmatured, as Bank shall determine in Bank's sole discretion.

3.4 **Care of Collateral.** Debtor shall have all risk of loss of the Collateral. Bank shall have no liability or duty, either before or after the occurrence of an Event of Default, on account of loss of or damage to, to collect or enforce any of its rights against, the Collateral, to collect any income accruing on the Collateral, or to preserve rights against account debtors or other parties with prior interests in the Collateral. If Bank actually receives any notices requiring action with respect to Collateral in Bank's possession, Bank shall take reasonable steps to forward such notices to Debtor. Debtor is responsible for responding to notices concerning the Collateral, voting the Collateral, and exercising rights and options, calls and conversions of the Collateral. Bank's sole responsibility is to take such action as is reasonably requested by Debtor in writing, however, Bank is not responsible to take any action that, in Bank's sole judgment, would affect the value of the Collateral as security for the Obligations adversely. While Bank is not required to take certain actions, if action is needed, in Bank's sole discretion, to preserve and maintain the Collateral, Debtor authorizes Bank to take such actions, but Bank is not obligated to do so.

3.5 **Authorization and Power-of-Attorney.** Debtor authorizes Bank to request other secured parties of Debtor to provide accountings, confirmations of Collateral and confirmations of statements of account concerning Debtor. Debtor hereby designates and appoints Bank and its designees as attorney-in-fact of Debtor, irrevocably and with power of substitution, with authority to endorse Debtor's name on requests to other secured parties of Debtor for accountings, confirmations of collateral and confirmations of statements of account.

3.6 **Financing Statements.** Debtor hereby authorizes Bank to execute and file one or more financing statements or continuation statements on Debtor's behalf. This grant of authority shall be irrevocable until all obligations have been fully paid and performed and this grant of authority shall be deemed a power coupled with an interest. Debtor's signature at the end of this instrument constitutes authentication of this Agreement and any and all Loan Documents shall be deemed to authorize Bank to file financing statements and continuation statements covering the collateral described herein according to the laws of the State of Tennessee.

4. **REPRESENTATIONS AND WARRANTIES.**

To induce Bank to enter into this Agreement, Debtor represents and warrants to Bank that:

4.1 **State of Incorporation and Legal Name.** Debtor's state of incorporation is the State of Tennessee.

4.2 **Good Standing.** Debtor is a corporation duly organized, legally existing and in good standing under the laws of the State of Tennessee, has the power to own its property and to carry on its business and is duly qualified to do business and is in good standing in each jurisdiction in which the character of the properties owned by it therein or in which the transaction of its business makes such qualification necessary.

4.3 **Authority.** Debtor has full power and authority to enter into this Agreement, to make the borrowings hereunder, to execute and deliver all documents and instruments required hereunder and to incur and perform the obligations provided for herein, all of which have been duly authorized by all necessary and proper corporate and other action, and no consent or approval of any person, including, without limitation, stockholders of Debtor and any public authority or regulatory body, which has not been obtained is required as a condition to the validity or enforceability hereof or thereof.

4.4 **Binding Agreements.** This Agreement has been duly and properly executed by Debtor, constitutes the valid and legally binding obligation of Debtor and is fully enforceable against Debtor in accordance with its terms, subject only to laws affecting the rights of creditors generally and application of general principles of equity.

4.5 **No Conflicting Agreements.** The execution, delivery and performance by Debtor of this Agreement and the borrowings hereunder will not (a) violate (i) any provision of law or any order, rule or regulation of any court or agency of government, (ii) any award of any arbitrator, (iii) the Charter or Bylaws of Debtor or (iv) any indenture, contract, agreement, mortgage, deed of trust or other instrument to which Debtor is a party or by which Debtor or any of its property is bound, or (b) be in conflict with, result in a breach of or constitute (with due notice and/or lapse of time) a material default under, any such award, indenture, contract, agreement, mortgage, deed of trust or other instrument, or result in the creation or imposition of

any Lien upon any of the property or assets of Debtor except for Liens created in favor of Bank under or pursuant to this Agreement.

4.6 **Litigation.** There are no judgments, injunctions or similar orders or decrees, claims, actions, suits or proceedings pending or, to the knowledge of Debtor, threatened against or affecting Debtor or any property of Debtor, at law or in equity, by or before any court or any federal, state, county, municipal or other governmental department, commission, board, bureau, agency or instrumentality, domestic or foreign, which could result in any material adverse change in the business, operations, prospects, properties or in the condition, financial or otherwise, of Debtor, and Debtor is not, to Debtor's knowledge, in default with respect to any judgment, order, writ, injunction, decree, rule or regulation of any court or any federal, state, county, municipal or other governmental department, commission, board, bureau, agency or instrumentality, domestic or foreign, which could have a material adverse effect on Debtor.

4.7 **Financial Condition.** The financial statements of Debtor heretofore delivered to Bank are true and complete, fairly present the financial condition of Debtor as at such dates and the results of its operations for the period then ended and were prepared in accordance with GAAP applied on a consistent basis for prior periods. There is no Indebtedness of Debtor as of the date of such statements which is not reflected therein and no material adverse change in Debtor's financial condition has occurred since the date of such statements.

4.8 **Taxes.** Debtor has paid or caused to be paid all federal, State and local taxes to the extent that such taxes have become due and has filed or caused to be filed all federal, State and local tax returns which are required to be filed by Debtor.

4.9 **Title to Properties.** Debtor has good and marketable title to all of its properties and assets (including the Collateral) and all of the properties and assets of Debtor are free and clear of Liens, except for Permitted Liens.

4.10 **Place of Business.** Debtor's principal place of business and chief executive office is located at the Business Premises.

4.11 **Financial Information.** All financial statements, schedules, reports and other information supplied to Bank by or on behalf of Debtor heretofore and hereafter are and will be true and complete.

4.12 **Licenses and Permits.** Debtor has duly obtained and now holds all licenses, permits, certifications, approvals and the like required by federal, State and local laws of the jurisdictions in which Debtor conducts its business, and each remains valid and in full force and effect.

4.13 **Certain Indebtedness.** There is no Indebtedness of Debtor owing to any employee, officer, stockholder or director of Debtor other than accrued salaries, commissions and the like.

4.14 **Broker's or Finder's Commissions.** No broker's or finder's fee or commission is or will be payable in connection with this Agreement or the transactions contemplated hereby, and Debtor agrees to save harmless and indemnify Bank from and against any claim, demand, action, suit, proceeding or liability for any such fee or commission, including any costs and expenses (including attorney's fees) incurred by Bank in connection therewith. The provisions of this Subsection shall survive the termination of this Agreement and Bank's security interest hereunder and the payment of all other Obligations.

4.15 **Outstanding Indebtedness.** Debtor has no outstanding Indebtedness except as disclosed hereof and there exists no default under the provisions of any instrument evidencing such Indebtedness or under the provisions of any agreement relating thereto.

4.16 **Regulation U.** Debtor does not own or presently intend to acquire any "margin stock" as defined in Regulation U (12 CFR Part 221) of the Board of Governors of the Federal Reserve System. None of the proceeds of any of the Loan hereunder will be used, directly or indirectly, for the purpose of purchasing or carrying any margin stock or for the purpose of reducing or retiring any indebtedness which was originally incurred to purchase or carry a margin stock or for any other purpose which might constitute this transaction a "purpose credit" within the meaning of Regulation U. Neither Debtor nor any agent acting on its behalf has taken or will take any action which might cause this Agreement to violate Regulation U or any other regulation of the Board of Governors of the Federal Reserve System or to violate the Securities Exchange Act of 1934, in each case as in effect now or as the same may hereafter be in effect.

4.17 **Government Contracts.** Debtor is not now, and has not been within the past 3 years, in receipt of any communication from any officer or employee of the United States Government regarding Debtor's actual or possible disqualification, suspension or debarment from contracting with the United States Government. Further, Debtor has no information, in relation to the obtaining, formation, pricing, performance, billing or administration of any one of its contracts with the United States Government of: (a) a violation of law, regulation or contract provision, or any such fact(s) or circumstance(s) reasonably indicating any such violation; (b) a pending or threatened investigation; (c) an existing or threatened adverse audit finding, whether draft or final; (d) an existing or threatened cost disallowance or finding of defective pricing; (e) a pending or threatened claim or action seeking a fine, penalty or damages; (f) a communication regarding, or actual initiation of, payment withholding or suspension, setoff, recoupment or debt collection; or (g) a contract termination or a communication reasonably indicating the potential for such a termination.

4.18 **Presence of Hazardous Materials or Hazardous Materials Contamination.** To the best of Debtor's knowledge and belief, and except as permitted by applicable Laws, no Hazardous Materials are located on any real property owned, operated or controlled by Debtor or for which Debtor is responsible and for which remedial or corrective action would, be required under applicable Laws. To the best of Debtor's knowledge and belief, and except as permitted by applicable Laws, no property owned, operated or controlled by Debtor has ever been used as a manufacturing, storage or dump site for Hazardous Materials.

4.19 **Patents, Trademarks, etc.** Debtor owns, possesses or has the right to use all necessary patents, patent rights, licenses, trademarks, trade names, trade name rights, copyrights and franchises to conduct its business as now conducted, without any known conflict with any patent, patent right, license, trademark, trademark rights, trade name right, trade name, copyright or franchise right of any other person.

4.20 **Perfection and Priority of Collateral.** Bank has or upon proper recording of any financing statement, execution of any control agreement or delivery of Collateral to Bank's possession, will have and will continue to have as security for the Obligations, a valid and perfected Lien on and security interest in all Collateral free of all other Liens, claims and rights of third parties whatsoever except Permitted Liens.

4.21 **Commercial Purpose.** The Loan is not a "consumer transaction" as defined in the Tennessee Uniform Commercial Code and none of the Collateral was or will be purchased or held primarily for personal, family or household purposes.

4.22 **Survival; Updates of Representations and Warranties.** All representations and warranties contained in or made in connection with this Agreement and the other Loan Documents shall survive the Closing and any advance made hereunder. Bank acknowledges and agrees that any and all representations and warranties contained in or made under or in connection with this Agreement may be amended, changed or otherwise modified by Debtor, with the consent of Bank, at any time and from time to time after the Closing so as to accurately reflect the matters represented and warranted therein; provided, that such amendments, changes and/or modifications are disclosed in writing to and approved by Bank. Bank shall have no obligation to waive any Event of Default due to any present or future inaccuracy of such representation or warranty or to agree to any amendment, change or modification of such representation or warranty.

5. **CONDITIONS OF LENDING.**

Unless Bank shall otherwise agree, Bank shall have no obligation to advance any funds to Debtor hereunder unless each of the following conditions precedent shall be satisfied as provided below:

5.1 **Documents.** There shall have been delivered to Bank, appropriately completed and duly executed (when applicable), the following, each in form and substance satisfactory to Bank:

- (a) The Note.
- (b) The Guaranty Agreement executed by the Guarantors.
- (c) The Loan and Security Agreement executed by Debtor.
- (d) A certificate of the Secretary of Debtor in form and content acceptable to Bank certifying resolutions authorizing Debtor to enter into the Loan.

(e) Certificate of Existence of Debtor issued by the Tennessee Secretary of State dated within ten (10) days of Closing.

(f) Evidence satisfactory to Bank that all insurance coverages and all insurance clauses or endorsements required pursuant to this Agreement and the Loan Documents are in effect, together with copies of all insurance policies and endorsements.

(g) Such financing statements and control agreements as may be required by Bank.

5.2 **No Default.** At Closing and at the time of every subsequent advance under this Agreement, Bank shall be fully satisfied that (a) all of the covenants, conditions, warranties and representations set forth herein and in the Loan Documents have been complied with and are true and complete on and as of such time with the same effect as though such covenants, conditions, warranties and representations had been made on and as of such time, (b) no Event of Default nor any event which, upon the giving of notice and/or the lapse of time, could constitute an Event of Default shall have occurred, and (c) the documents and matters required to be executed, delivered, opined and/or certified shall be in full force and effect and/or true and complete, as the case may be.

5.3 **Legal Matters.** At Closing, all legal matters in connection therewith or incidental thereto shall be fully satisfactory to Bank's counsel.

6. **AFFIRMATIVE COVENANTS.**

Debtor covenants and agrees with Bank that, until (a) all Obligations have been paid in full, (b) there exists no commitment by Bank which could give rise to any Obligations, and (c) all appropriate termination statements have been filed terminating the security interest granted Bank hereunder, Debtor will:

6.1 **Financial Statements.** Furnish to Bank in writing: (a) as soon as available, but in no event more than one hundred twenty (120) days after the close of each fiscal year, a copy of the annual financial statement of Debtor, prepared in accordance with GAAP and audited by an independent certified public accountant satisfactory to Bank, which financial statement shall include a balance sheet of Debtor as of the end of such fiscal year and a statement of income and changes in shareholders' equity of Debtor for such fiscal year; (b) annual personal financial statements on the Guarantors, together with a copy of their personal tax returns (including all schedules and K-1s) within one hundred twenty (120) days of year end; and (c) such additional information, reports or statements as Bank may from time to time reasonably request.

6.2 **Taxes.** Pay and discharge all taxes, assessments and governmental charges upon Debtor, its income and properties, prior to the date on which penalties attach thereto unless and to the extent only that the same are being diligently contested by Debtor in good faith in the normal course of business by appropriate proceedings, provided, however, that:

(a) Bank shall have been given reasonable prior written notice of intention to contest; (b) nonpayment of the same will not, in Bank's sole discretion, materially impair any of the Collateral or Bank's rights or remedies with respect thereto or the prospect for full and punctual payment of all of the Obligations; (c) Debtor at all times effectively stays or prevents any official or judicial sale of or action or filing against any of the Collateral by reason of nonpayment of the same; and (d) Debtor establishes reasonable reserves for any liabilities being contested and for expenses arising out of such contest.

6.3 **Corporate Existence, Continuation of Business and Compliance with Laws.** Maintain its corporate existence in good standing; continue its business operations as now being conducted; and comply with all applicable federal, State and local laws, rules, ordinances, regulations and orders unless and to the extent only that the validity or applicability thereof is being diligently contested by Debtor in good faith by appropriate proceedings, provided, however, that: (a) Bank shall have been given reasonable prior written notice of intention to contest; (b) such noncompliance will not, in Bank's sole discretion, materially impair any of the Collateral or Bank's rights or remedies with respect thereto or the prospect for full and punctual payment of all of the Obligations; (c) Debtor at all times effectively stays or prevents any official or judicial sale of or action or filing against any of the Collateral by reason of such noncompliance; and (d) Debtor establishes reasonable reserves for any liabilities or expenses which may arise out of such noncompliance and contest.

6.4 **Books and Records.** Keep and maintain proper and current books and records in accordance with GAAP and permit access by Bank to, reproduction by Bank of and copying by Bank from, such books and records during normal business hours. All reasonable costs and expenses of such inspections and examinations shall be paid by Debtor.

6.5 **Maintenance of Properties.** Maintain all properties and improvements necessary to the conduct of its business in good working order and condition, ordinary wear and tear excepted, and cause replacements and repairs to be made when necessary for the proper conduct of its business.

6.6 **Patents, Franchises, etc.** Maintain, preserve and protect all licenses, patents, franchises, trademarks and trade names of Debtor or licensed by Debtor which are necessary to the conduct of the business of Debtor as now conducted, free of any conflict with the rights of any other person.

6.7 **Insurance.** Maintain with duly licensed insurers and in amounts satisfactory to Bank such insurance on Debtor's tangible personal property against such risks and with such loss deductible amounts as may be satisfactory to Bank.

6.8 **Evidence of Insurance.** Deliver to Bank from time to time, and periodically if Bank shall so require, evidence satisfactory to Bank that all insurance and endorsements required pursuant to this Agreement and the Loan Documents are in effect.

6.9 **Further Assurances and Corrective Instruments.** Promptly execute, acknowledge and deliver, or cause to be executed, acknowledged and delivered, to Bank from

time to time such supplements hereto and such financing statements and other instruments and documents as may be requested by Bank to protect and preserve the Collateral, Bank's security interest therein, perfection of Bank's security interest and/or Bank's rights and remedies hereunder.

6.10 **Financial Information.** Deliver to Bank promptly upon Bank's request, and periodically if Bank shall so require, such written statements, schedules or reports (which shall be Certified if required by Bank) in such form, containing such information and accompanied by such documents as may be satisfactory to Bank from time to time concerning the Collateral, Debtor's financial condition or business operations or any other matter or matters, including, without limitation, copies of federal, State and local tax returns of Debtor, and permit Bank, its agents and designees, to discuss Debtor's financial condition and business operations with Debtor's officers and employees.

6.11 **Notice of Event of Default.** Immediately notify Bank in writing of the occurrence of any Event of Default or any event or existing condition which, with the giving of notice and/or the lapse of time, could constitute an Event of Default or which might materially and adversely affect the financial conditions or operations of Debtor and the facts with respect thereto.

6.12 **ERISA.** (a) At all times maintain each of its employee pension benefit plans, as that term is defined in Section 3(2) of the Employee Retirement Income Security Act of 1974, as amended from time to time ("ERISA"), in conformity with all applicable provisions of ERISA and other federal and State statutes relating to employee benefit plans; (b) at all times make prompt payments of contributions required to meet the minimum funding standards set forth in Sections 302 and 305 of ERISA with respect to each such plan; (c) if requested by Bank, promptly after the filing thereof, furnish to Bank copies of each annual report required to be filed pursuant to Section 103 of ERISA in connection with each such plan for each plan year, including any certified financial statements or actuarial statements required pursuant to said Section 103; (d) notify Bank immediately of any fact, including, without limitation, any "Reportable Event" (as that term is defined in Section 4043(b) of ERISA) arising in connection with any such plan which might constitute grounds for the termination thereof by the Pension Benefit Guaranty Corporation or for the appointment by the appropriate United States District Court of a trustee to administer the plan; and (e) furnish to Bank, promptly upon its request therefor such additional information concerning any such plan as Bank may request.

6.13 **Continuance of Business.** Continue to operate the business as set forth in Debtor's loan application to Bank and not to acquire or operate any other business enterprise without Bank's prior consent.

6.14 **Proceeds.** Use the proceeds of advances hereunder only for the purposes set forth herein and to pay the costs, expenses and fees payable by Debtor under this Agreement and the other Loan Documents.

6.15 **Hazardous Materials: Contamination.** Debtor agrees to, (a) give notice to Bank immediately upon Debtor's acquiring knowledge of the presence of any Hazardous

Materials (other than those stored in compliance with applicable Laws and are in Debtor's possession in the ordinary course of business) on any property owned or controlled by Debtor or for which Debtor is responsible or of any Hazardous Materials Contamination with a full description thereof for which remedial or corrective action is required; (b) promptly take action to comply with any Laws requiring the removal, treatment or disposal of Hazardous Materials or Hazardous Materials Contamination and provide Bank with satisfactory evidence of such action, which action must be in all respects sufficient to avoid any penalty, assessment or notice of non-compliance with any required remedial or corrective action on the part of any Governmental Authority; (c) provide Bank, within thirty (30) days after a demand by Bank, with a bond, letter of credit or similar financial assurance evidencing to Bank's reasonable satisfaction that the necessary funds are available to pay the cost of removing, treating and disposing of Hazardous Materials described in item (b) or Hazardous Materials Contamination and discharging any Lien which may be established as a result thereof on any property owned or controlled by Debtor or for which Debtor is responsible; and (d) defend, indemnify and hold harmless Bank and its employees, trustees, successors and assigns from any and all claims which may now or in the future (whether before or after the termination of this Agreement) be asserted as a result of the presence of any Hazardous Materials on any property owned or controlled by Debtor for which Debtor is responsible for any Hazardous Materials Contamination.

6.16 **Bank as Depository.** Maintain Bank as its principal depository for its deposit and other commercial accounts.

7. **NEGATIVE COVENANTS.**

Debtor covenants and agrees with Bank that, until (a) all Obligations have been paid in full and (b) there exists no commitment by Bank which could give rise to any Obligations, Debtor will not, directly or indirectly, without Bank's prior written consent:

7.1 **Indebtedness.** Create, incur, assume or permit to exist, directly or indirectly, any Indebtedness except: (a) Indebtedness to Bank; (b) trade Indebtedness (which shall not include any borrowing, trade acceptance or notes given in settlement of trade Indebtedness) incurred in the ordinary course of business and not in dispute or more than thirty (30) days past due; (c) existing Indebtedness previously disclosed by Debtor to Bank in writing; and (d) Indebtedness which shall be consented to by Bank in writing in advance, in Bank's sole but reasonable discretion, and if required by Bank, subordinated to the Obligations by a written agreement satisfactory to Bank in form and substance.

7.2 **Liens.** Create, incur, assume or permit to exist, directly or indirectly, any Lien upon any of Debtor's properties or assets, now owned by Debtor, other than Liens to Bank.

7.3 **Merger.** Enter into or be a party to any merger, consolidation, reorganization or exchange of stock or assets.

7.4 **Sale of Assets, etc.** Sell, assign, transfer, convey or lease any interest in all or any substantial part of its property except in the ordinary course of Debtor's business as now being conducted; purchase or otherwise acquire all or substantially all of the assets of any

other person or persons, or any shares of stock of, or similar interest in, any other person or persons.

7.5 **Fiscal Year.** Change Debtor's fiscal year.

7.6 **Change of Name.** Change the name of Debtor.

7.7 **Trade Names.** Use any trade name other than Debtor's true corporate name.

7.8 **ERISA Compliance.** Engage in any "prohibited transaction" (as defined in Section 406 or Section 2003(a) of ERISA and not otherwise exempted under Title I, Part 4 of ERISA), any "accumulated funding deficiency" (as defined in Section 302 of ERISA), whether or not waived, or terminate any pension plan in a manner which could result in the imposition of a Lien on the property of Debtor pursuant to Section 4068 of ERISA.

7.9 **Change Business Premises.** Change or move its Business Premises.

7.10 **Dividends, Stock Redemptions.** Directly or indirectly declare or pay any dividend on, or make any other distribution with respect to (whether by reduction of capital or otherwise), any shares of its capital stock or make any advances or loans to stockholders other than S Corporation tax distributions.

8. **EVENTS OF DEFAULT.**

The occurrence of any one or more of the following events shall constitute an "Event of Default":

8.1 **Failure to Pay.** The failure of Debtor, any Guarantor or other Obligor to pay any of the Obligations as and when due and payable (whether by acceleration, declaration, extension or otherwise).

8.2 **Covenants and Agreements.** The failure of Debtor, any Guarantor or other Obligor to perform, observe or comply with any of the covenants of this Agreement or any of the Loan Documents.

8.3 **Information, Representations and Warranties.** If any representation or warranty made herein or if any information contained in any financial statement, application, schedule, report or any other document given by Debtor, any Guarantor or by any person in connection with the Obligations, with the Collateral, or with any of the Loan Documents is not in all respects true and accurate or if Debtor, any Guarantor or such other person omitted to state any material fact or any fact necessary to make such information not misleading.

8.4 **Default under Loan Documents.** The occurrence of a default or an event of default under any of the Loan Documents.

8.5 **Default on Other Obligations.** The occurrence of any default under any other borrowing if the result of such default would permit the acceleration of the maturity of any note, loan or other agreement between Debtor or any Guarantor and any person other than Bank.

8.6 **Insolvency.** Debtor, any Guarantor or other Obligor shall be or become insolvent (as defined in Section 101 of the United States Bankruptcy Code) or unable to pay their debts as they become due, or admit in writing to such insolvency or to such inability to pay their debts as they become due.

8.7 **Involuntary Bankruptcy.** There shall be filed against Debtor, any Guarantor, or other Obligor an involuntary petition or other pleading seeking the entry of a decree or order for relief under the United States Bankruptcy Code or any similar federal or state insolvency or similar laws ordering: (a) the liquidation of Debtor, any Guarantor or such Obligor or (b) a reorganization of Debtor, any Guarantor or such Obligor or the business and affairs of Debtor, the Guarantor or such Obligor, or (c) the appointment of a receiver, liquidator, assignee, custodian, trustee or similar official for Debtor, any Guarantor or other Obligor of the property of Debtor, the Guarantor or such Obligor and the failure to have such petition or other pleading denied or dismissed within forty-five (45) calendar days from the date of filing.

8.8 **Voluntary Bankruptcy.** The commencement by Debtor, any Guarantor or other Obligor of a voluntary case under the federal bankruptcy laws or any federal or state insolvency or similar laws or the consent by Debtor, any Guarantor or other Obligor to the appointment of or taking possession by a receiver, liquidator, assignee, trustee, custodian or similar official for Debtor, any Guarantor or other Obligor of any of the property of Debtor, any Guarantor or other Obligor or the making by Debtor, any Guarantor or other Obligor of an assignment for the benefit of creditors, or the failure by Debtor, any Guarantor or other Obligor generally to pay their debts as the debts become due.

8.9 **Judgments, Awards.** The entry of any judgment, order, award or decree against Debtor, any Guarantor or other Obligor and a determination by Bank, in good faith but in its sole discretion, that the same, when aggregated with all other judgments, orders, awards and decrees outstanding against Debtor, any Guarantor or other Obligor, could have a material adverse effect on the prospect for Bank to fully and punctually realize the full benefits conferred on Bank by this Agreement.

8.10 **Injunction.** The injunction or restraint of Debtor, any Guarantor or other Obligor in any manner from conducting its business in whole or in part and a determination by Bank, in good faith but in its sole discretion, that the same could have a material adverse effect on the prospect for Bank to fully and punctually realize the full benefits conferred on Bank by this Agreement.

8.11 **Attachment by Creditors.** Any assets of Debtor, any Guarantor or other Obligor shall be attached, levied upon, seized or repossessed, or come into the possession of a trustee, receiver or other custodian and a determination by Bank, in good faith but in its sole discretion, that the same could have a material adverse effect on the prospect for Bank to fully and punctually realize the full benefits conferred on Bank by this Agreement.

8.12 **Dissolution, Merger, Consolidation, Reorganization.** The voluntary or involuntary dissolution, merger, consolidation, winding up or reorganization of Debtor, any Guarantor or other Obligor or the occurrence of any action preparatory thereto.

8.13 **Adverse Change in Financial Condition.** The determination in good faith by Bank that a material adverse change has occurred in the financial condition of Debtor, any Guarantor or other Obligor from the conditions set forth in the most recent financial statement of Debtor, any Guarantor or such Obligor heretofore furnished to Bank or from the financial condition of Debtor or any Guarantor as heretofore most recently disclosed to Bank in any other manner.

8.14 **Adverse Change in Value of Collateral.** The determination in good faith by Bank that the security for the Obligations is or has become inadequate.

8.15 **Prospect of Payment or Performance.** The determination in good faith by Bank that the prospect for payment or performance of any of the Obligations is impaired for any reason.

8.16 **Death.** Death of any Guarantor or other Obligor which is a natural person.

8.17 **Termination Statement.** Any amendment to or termination of a financing statement naming Debtor as debtor and Bank as secured party, or any correction statement with respect thereto, is filed in any jurisdiction by any party other than Bank without the prior consent of Bank.

9. **RIGHTS AND REMEDIES**

9.1 **Rights and Remedies of Bank.** Upon and after the occurrence of an Event of Default, Bank may, without notice or demand, exercise in any jurisdiction in which enforcement hereof is sought, the following rights and remedies, in addition to the rights and remedies available to Bank under the Loan Documents, the rights and remedies of a secured party under the Tennessee Uniform Commercial Code and all other rights and remedies available to Bank under applicable law, all such rights and remedies being cumulative and enforceable alternatively, successively or concurrently provided, however, that in the case of any Event of Default referred to above the unpaid principal balance of the Note, together with all accrued and unpaid interest and all other Obligations then outstanding shall be automatically due and payable by Debtor to Bank without notice, presentment or demand:

(a) Declare the Note, all interest accrued and unpaid thereon and all other Obligations to be immediately due and payable and the same shall thereupon become immediately due and payable without presentment, demand for payment, protest or notice of any kind, all of which are hereby expressly waived.

(b) Institute any proceeding or proceedings to enforce the Obligations and any Liens of Bank.

(c) Take possession of the Collateral, and for that purpose, so far as Debtor may give authority therefor, enter upon any premises on which the Collateral or any part thereof may be situated and remove the same therefrom without any liability for suit, action or other proceeding, DEBTOR HEREBY WAIVING ANY AND ALL RIGHTS TO PRIOR NOTICE AND TO JUDICIAL HEARING WITH RESPECT TO REPOSSESSION OF COLLATERAL, and require Debtor, at Debtor's expense, to assemble and deliver the Collateral to such place or places as Bank may designate.

(d) Operate, manage and control the Collateral (including use of the Collateral and any other property or assets of Debtor in order to continue or complete performance of Debtor's obligations under any contracts of Debtor), or permit the Collateral or any portion thereof to remain idle or store the same, and collect all rents and revenues therefrom and sell or otherwise dispose of any or all of the Collateral upon such terms and under such conditions as Bank, in its sole discretion, may determine, and purchase or acquire any of the Collateral at any such sale or other disposition, all to the extent permitted by applicable law.

(e) Enforce Debtor's rights against any account debtors and other obligors.

(f) Cease making advances hereunder and under any other commitments or credit accommodations of Bank to Debtor and stop and retract the making of any advance hereunder or thereunder which may have been requested by Debtor.

9.2 **Power of Attorney.** Effective upon the occurrence of an Event of Default, Debtor hereby designates and appoints Bank and its designees as attorney-in-fact of Debtor, irrevocably and with power of substitution, with authority to endorse Debtor's name on any notes, acceptances, checks, drafts, money orders, instruments or other evidences of payment or proceeds of the Collateral that may come into Bank's possession; to execute proofs of claim and loss; to adjust and compromise any claims under insurance policies; and to perform all other acts necessary and advisable, in Bank's sole discretion, to carry out and enforce this Agreement and the Loan Documents. All acts of said attorney or designee are hereby ratified and approved by Debtor and said attorney or designee shall not be liable for any acts of commission or omission nor for any error of judgment or mistake of fact or law. This power of attorney is coupled with an interest and is irrevocable so long as any of the Obligations remain unpaid or unperformed or there exists any commitment by Bank which could give rise to any Obligations.

9.3 **Notice of Disposition of Collateral.** It is mutually agreed that commercial reasonableness and good faith require Bank to give Debtor, after default, no more than ten (10) days prior written notice of the time and place of any public disposition of Collateral or of the time after which any private disposition or any other intended disposition is to be made. It is mutually agreed that it is commercially reasonable for Bank to disclaim all warranties which arise with respect to the disposition of the Collateral.

9.4 **Costs and Expenses.** Debtor agrees to pay to Bank on demand the amount of all expenses paid or incurred by Bank in consulting with counsel concerning any of its rights hereunder, under the Loan Documents or under applicable law, all expenses, including attorneys' fees and court costs paid or incurred by Bank in exercising or enforcing any of its rights hereunder, under the Loan Documents or under applicable law together with interest on all such expenses paid by Bank at the highest rate and calculated in the manner provided in the Note, the provisions of this Subsection shall survive the termination of this Agreement and Bank's security interest hereunder and the payment of all other Obligations.

10. MISCELLANEOUS

10.1 **Performance for Debtor.** Debtor agrees and hereby authorizes that Bank may, in Bank's sole discretion, but Bank shall not be obligated to, whether or not an Event of Default shall have occurred, advance funds on behalf of Debtor, without prior notice to Debtor, in order to insure Debtor's compliance with any covenant, warranty, representation or agreement of Debtor made in or pursuant to this Agreement or any of the Loan Documents, to continue or complete, or cause to be continued or completed, performance of Debtor's obligations under any contracts of Debtor, to cover overdrafts in any checking or other accounts of Debtor at Bank or to preserve or protect any right or interest of Bank in the Collateral or under or pursuant to this Agreement or any of the Loan Documents, including, without limitation, the payment of any insurance premiums or taxes and the satisfaction or discharge of any judgment or any Lien upon the Collateral or other property or assets of Debtor; provided, however, that the making of any such advance by Bank shall not constitute a waiver by Bank of any Event of Default with respect to which such advance is made nor relieve Debtor of any such Event of Default. Debtor shall pay to Bank upon demand all such advances made by Bank with interest thereon at the highest rate and calculated in the manner provided in the Note. All such advances shall be deemed to be included in the Obligations and secured by the security interest granted Bank hereunder; provided, however, that the provisions of this Subsection shall survive the termination of this Agreement and Bank's security interest hereunder and the payment of all other Obligations.

10.2 **Expenses.** Whether or not any of the transactions contemplated hereby shall be consummated, Debtor agrees to pay to Bank on demand the amount of all expenses paid or incurred by Bank (including the fees and expenses of its counsel) in connection with the preparation of all written commitments of Bank antedating this Agreement, this Agreement and the Loan Documents and all documents and instruments referred to herein and all expenses paid or incurred by Bank in connection with the filing or recordation of all financing statements and instruments as may be required by Bank at the time of, or subsequent to, the execution of this Agreement, including, without limitation, all documentary stamps, indebtedness taxes, recordation and transfer taxes and other costs and taxes incident to recordation of any document or instrument in connection herewith. Debtor agrees to save harmless and indemnify Bank from and against any liability resulting from the failure to pay any required documentary stamps, indebtedness taxes, recordation and transfer taxes, recording costs or any other expenses incurred by Bank in connection with this Agreement. The provisions of this Subsection shall survive the termination of this Agreement and Bank's security interest hereunder and the payment of all other Obligations.

10.3 **Applications of Payments and Collateral.** Except as may be otherwise specifically provided in this Agreement, all Collateral and proceeds of Collateral coming into Bank's possession and all payments made by any Obligor may be applied by Bank to any of the Obligations, whether matured or unmatured, as Bank shall determine in its sole but reasonable discretion. Bank may defer the application of non-cash proceeds of Collateral, including, but not limited to, non-cash proceeds collected under Subsection 3.3 hereof, to the Obligations until cash proceeds are actually received by Bank.

10.4 **Waivers by Debtor.** Debtor hereby waives, to the extent the same may be waived under applicable law: (a) notice of acceptance of this Agreement; (b) all claims, causes of action and rights of Debtor against Bank on account of actions taken or not taken by Bank in the exercise of Bank's rights or remedies hereunder, under the Loan Documents or under applicable law; (c) all claims of Debtor for failure of Bank to comply with any requirement of applicable law relating to enforcement of Bank's rights or remedies hereunder, under the Loan Documents or under applicable law; (d) all rights of redemption of Debtor with respect to the Collateral; (e) in the event Bank seeks to repossess any or all of the Collateral by judicial proceedings, any bond(s) or demand(s) for possession which otherwise may be necessary or required; (f) presentment, demand for payment, protest and notice of non-payment and all exemptions; (g) any and all other notices or demands which by applicable law must be given to or made upon Debtor by Bank; (h) settlement, compromise or release of the obligations of any person primarily or secondarily liable upon any of the Obligations; (i) trial by jury in any action or proceeding of any kind or nature in connection with any of the Obligations, this Agreement or any of the Loan Documents; and (j) substitution, impairment, exchange or release of any Collateral for any of the Obligations. Debtor agrees that Bank may exercise any or all of its rights and/or remedies hereunder, under the Loan Documents and under applicable law without resorting to and without regard to any Collateral or sources of liability with respect to any of the Obligations. Upon termination of this Agreement and Bank's security interest hereunder and payment of all Obligations, (a) within ten (10) days following Debtor's request to Bank, Bank shall release control of any security interest in the Collateral perfected by control, and (b) within twenty (20) days after Bank receives an authenticated demand from Debtor, Bank shall send Debtor a statement terminating any financing statement filed against the Collateral or file such termination statement.

10.5 **Waivers by Bank.** Neither any failure nor any delay on the part of Bank in exercising any right, power or remedy hereunder, under any of the Loan Documents or under applicable law shall operate as a waiver thereof, nor shall a single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any other right, power or remedy.

10.6 **Bank's Setoff.** Bank shall have the right, in addition to all other rights and remedies available to it, following an Event of Default, to set off against any Obligations due Bank, any debt owing to Debtor by Bank, including, without limitation, any funds in any checking or other account now or hereafter maintained by Debtor at Bank. Debtor hereby confirms Bank's right to setoff, and nothing in this Agreement or any of the Loan Documents shall be deemed a waiver or prohibition of Bank's right of setoff.

10.7 **Modifications.** No modifications or waiver of any provision of this Agreement or any of the Loan Documents, and no consent by Bank to any departure by Debtor therefrom, shall in any event be effective unless the same shall be in writing, and then such waiver or consent shall be effective only in the specific instance and for the purpose for which given. No notice to or demand upon Debtor in any case shall entitle Debtor to any other or further notice or demand in the same, similar or other circumstances.

10.8 **Notices.** Unless otherwise provided herein, all notices, requests and other communications provided for hereunder shall be in writing and shall be given at the following addresses:

If to the Debtor: Gulf & Ohio Railways Holding Company, Inc.
401 Henley Street
Knoxville, Tennessee 37902

If to Bank: BankEast
607 Market Street
Knoxville, Tennessee 37902
Attention: Ron Boling

Any such notice, request or other communication shall be effective (i) if given by mail, upon the earlier of receipt or the third business day after such communication is deposited in the United States mails, registered or certified, with first class postage prepaid, addressed as aforesaid or (ii) if given by any other means (including, without limitation, by air courier), when delivered at the address specified herein. The Debtor or the Bank may change its address for notice purposes by notice to the other parties in the manner provided herein.

10.9 **Applicable Law and Consent to Jurisdiction.** The performance and construction of this Agreement and the Loan Documents shall be governed by the laws of the state of Tennessee (excluding the choice of law rules thereof). Debtor agrees that any suit, action or proceeding instituted against Debtor with respect to any of the Obligations, the Collateral, this Agreement or any of the Loan Documents may be brought in any court of competent jurisdiction located in the state of Tennessee. By its execution hereof, Debtor hereby irrevocably waives any objection and any right of immunity on the ground of venue, the convenience of the forum or the jurisdiction of such courts or from the execution of judgments resulting therefrom. Debtor hereby irrevocably accepts and submits to the jurisdiction of the aforesaid courts in any such suit, action or proceeding.

10.10 **Survival: Successors and Assigns.** All covenants, agreements, representations and warranties made herein and in the Loan Documents shall survive the execution and delivery hereof and thereof, shall survive Closing and shall continue in full force and effect until all Obligations have been paid in full, there exists no commitment by Bank which could give rise to any Obligations and all appropriate termination statements have been filed terminating the security interest granted Bank hereunder. Whenever in this Agreement any of the parties hereto is referred to, such reference shall be deemed to include the successors and assigns of such party. All covenants, agreements, representations and warranties by or on behalf

of Debtor which are contained in this Agreement and the Loan Documents shall inure to the benefit of Bank, its successors and assigns. Debtor may not assign this Agreement or any of its rights hereunder without the prior written consent of Bank.

10.11 **Severability.** If any term, provision or condition, or any part thereof, of this Agreement or any of the Loan Documents shall for any reason be found or held invalid or unenforceable by any court or governmental agency of competent jurisdiction, such invalidity or unenforceability shall not affect the remainder of such term, provision or condition nor any other term, provision or condition, and this Agreement and the Loan Documents shall survive and be construed as if such invalid or unenforceable term, provision or condition had not been contained therein.

10.12 **Merger and Integration.** This Agreement and the attached Schedules (if any) contain the entire agreement of the parties hereto with respect to the matters covered and the transactions contemplated hereby, and no other agreement, statement or promise made by any party hereto, or by any employee, officer, agent or attorney of any party hereto, which is not contained herein shall be valid or binding.

(a) **WAIVER OF JURY TRIAL. DEBTOR HEREBY (a) COVENANTS AND AGREES NOT TO ELECT A TRIAL BY JURY OF ANY ISSUE TRIABLE OF RIGHT BY A JURY, AND (b) WAIVES TRIAL BY JURY IN ANY ACTION OR PROCEEDING TO WHICH BANK AND DEBTOR MAY BE PARTIES, ARISING OUT OF, IN CONNECTION WITH OR IN ANY WAY PERTAINING TO THIS AGREEMENT, ANY OF THE LOAN DOCUMENTS AND/OR ANY TRANSACTIONS, OCCURRENCES, COMMUNICATIONS OR UNDERSTANDINGS (OR THE LACK OF ANY OF THE FOREGOING) RELATING IN ANY WAY TO THE DEBTOR-CREDITOR RELATIONSHIP BETWEEN THE PARTIES. IT IS UNDERSTOOD AND AGREED THAT THIS WAIVER CONSTITUTES A WAIVER OF TRIAL BY JURY OF ALL CLAIMS AGAINST ALL PARTIES TO SUCH ACTIONS OR PROCEEDINGS, INCLUDING CLAIMS AGAINST PARTIES WHO ARE NOT PARTIES TO THIS SECURITY AGREEMENT. THIS WAIVER OF JURY TRIAL IS SEPARATELY GIVEN, KNOWINGLY, WILLINGLY AND VOLUNTARILY MADE BY DEBTOR AND DEBTOR HEREBY AGREES THAT NO REPRESENTATIONS OF FACT OR OPINION HAVE BEEN MADE BY ANY INDIVIDUAL TO INDUCE THIS WAIVER OF TRIAL BY JURY OR TO IN ANY WAY MODIFY OR NULLIFY ITS EFFECT. BANK IS HEREBY AUTHORIZED TO SUBMIT THIS AGREEMENT TO ANY COURT HAVING JURISDICTION OVER THE SUBJECT MATTER AND DEBTOR AND BANK, SO AS TO SERVE AS CONCLUSIVE EVIDENCE OF SUCH WAIVER OF RIGHT TO TRIAL BY JURY. DEBTOR REPRESENTS AND WARRANTS THAT IT HAS BEEN REPRESENTED IN THE SIGNING OF THIS AGREEMENT AND IN THE MAKING OF THIS WAIVER BY INDEPENDENT LEGAL COUNSEL, SELECTED OF ITS OWN FREE WILL, AND/OR THAT IT HAS HAD THE OPPORTUNITY TO DISCUSS THIS WAIVER WITH COUNSEL.**

10.13 **Counterparts.** This Agreement may be executed in any number of counterparts and by different parties hereto on separate counterparts, each of which, when so

executed and delivered, shall be an original, but all such counterparts shall together constitute one and the same instrument.

10.14 **Headings.** The headings and sub-headings contained in the titling of this Agreement are intended to be used for convenience only and shall not be used or deemed to limit or diminish any of the provisions hereof.

10.15 **Recitals.** The Recitals hereto are hereby incorporated into and made a part of this Agreement.

10.16 **Maximum Rate of Interest.** Notwithstanding any provision of this Agreement, the Note, or the Loan Documents to the contrary, Debtor shall not be obligated to pay interest in excess of the maximum rate of interest permitted by the laws of any state determined to apply or the laws of the United States applicable to loans in such state. If any provisions of this Agreement, the Note, or the Loan Documents shall ever be construed to require the payment of any amount of interest in excess of that permitted by applicable law, then the interest to be paid shall be held subject to reduction to the amount allowed under applicable law and any sums paid in excess of the interest rate allowed by law shall be applied in reduction of the principal balance outstanding. Debtor acknowledges that it has been contemplated at all times by Debtor that the laws of the state of Tennessee will govern the maximum rate of interest that it is permissible for Bank to charge Debtor.

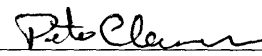
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IN WITNESS WHEREOF, the parties hereto have executed or caused this Agreement to be executed as of the date first above written.

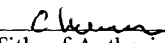
**GULF & OHIO RAILWAYS HOLDING
COMPANY, INC.**



Signature of Authorized Official




Name of Authorized Official

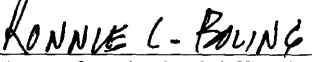


Title of Authorized Official

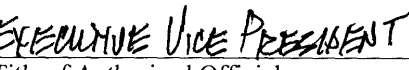
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Signature of Authorized Official



Name of Authorized Official

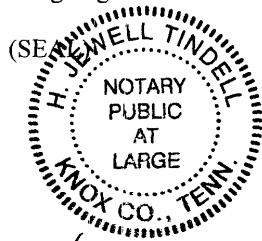



Title of Authorized Official

STATE OF TENNESSEE)

COUNTY OF KNOX)

On this 23rd day of July, 2004, before me personally appeared **H. Peter Claussen**, to me personally known, who being by me duly sworn, says that he is the President of **Gulf & Ohio Railways Holding Company, Inc.**, that the seal affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.




Signature of Notary Public

My Commission expires 6/6/06